

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2008 Supp.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCMR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules that replace existing section 306 of Title 23 DCMR and maintain the current limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in a portion of East Dupont Circle, which shall be known as the East Dupont Circle Moratorium Zone, for a three (3) year period. The proposed rules also permit the approval of no more than four (4) lateral expansion applications.

On February 12, 2009 the Board received a request from Advisory Neighborhood Commission 2B (ANC 2B), voting nine (9) to zero (0) with a quorum present, for a thirty (30) day extension of the existing East Dupont Circle Moratorium Zone to April 23, 2009. The request for the extension was based upon ANC 2B's desire to hold one more public meeting to receive community input and to finalize a committee report for consideration by the full ANC 2B. On March 4, 2009, the Board held a Fact Finding Hearing on the request for the thirty (30) day extension. ANC 2B appeared at the Fact Finding Hearing in support of the thirty (30) day extension. The Dupont Circle Merchants and Professional Association (DC MAP) also attended the Fact Finding Hearing and supported the thirty (30) day extension. As a result, the Board voted six (6) to (0) on March 4, 2009 to extend the existing East Dupont Circle Moratorium for thirty (30) days to April 23, 2009.

On March 12, 2009, ANC 2B filed its resolution, adopted on a nine (9) to zero (0) vote with a quorum present, to renew the East Dupont Circle moratorium for a five (5) year period. The ANC 2B resolution requested the approval of no more than two (2) lateral expansions of existing licenses. The resolution also addressed requirements regarding entertainment endorsements, prohibited additional sidewalk café and rooftop seats for establishments along 17th Street between P and Q Streets, N.W. and finally, encouraged establishments adjacent to Stead Park to construct summer gardens overlooking the renovated park.

On April 15, 2009, the Board held a public hearing on ANC 2B's request to renew the moratorium pursuant to the requirements of D.C. Official Code § 25-354 (2001) and approve no more than two (2) requests for lateral expansion of existing licenses, at which time it received a significant amount of detailed testimony and comments, both in favor of and in opposition to the renewal of the East Dupont Circle moratorium.

On April 22, 2009, the Board found based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001), that the testimony and evidence put forward by ANC 2B, and various individual residents located in or in proximity to the East Dupont Circle Moratorium Zone warranted the continued limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in the East Dupont Circle

Moratorium Zone, based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001) with some modification. The Board modified the existing moratorium to permit the issuance of one (1) additional Class CR or Class DR retailer's license.

At the April 22, 2009 hearing, the Board adopted ANC 2B's proposal for the approval of no more than two (2) lateral expansion applications. The Board also noted that while it gave great weight to the ANC and considered heavily the concerns of the residents who live most closely to the commercial corridor, it is the Board's position that moratoriums are not meant to be in place indefinitely. The existing East Dupont Circle Moratorium has been in place for over 18 years and there has been a great deal of change in the neighborhood it is intended to preserve.

On June 25, 2009, a Request for Reconsideration of the East Dupont Moratorium Proposed Rulemaking was filed by area residents led by David J. Mallof, Donald Jones and Madison Jones (the Residents) asking the Board to reverse itself on three proposed actions in its April 22, 2009 decision. Specifically, the Residents requested that the Board not increase the number of existing licenses from 22 to 23; that the Board should prohibit incremental licensing; and that the lateral expansions should be limited to interior space only.

The Board, having been asked to reconsider its decision of April 22, 2009, takes this opportunity to not only review the Residents' Request for Reconsideration, but it also takes this opportunity to revisit the entirety of its April 22, 2009 decision. The Board has decided to make two substantive changes to its original April 22, 2009 notice of proposed and emergency rulemaking. First, the Board is in agreement with the residents' request that the Board maintain the current limit of existing licenses at twenty-two (22). As such, the Board has decided not to add an additional license in the East Dupont Circle Moratorium Zone. Second, public comment received by the Board reflects that there is a need for more than the two lateral expansion applications requested by ANC 2B. Specifically, there are establishments with significant neighborhood support, who would not be able to file if lateral expansion were limited to only two (2) applications. As such, the Board now finds that it is appropriate to grant four (4) lateral expansions, rather than the two that were originally requested.

This rulemaking was adopted by the Board on July 29, 2009 by a 4-2 vote. Board Members Mital M. Gandhi and Charles Brodsky dissented from the position taken by the majority of the Board with regard to the rulemaking. Board Members Gandhi and Brodsky were in favor of lifting the moratorium on lateral expansions altogether. Board Members Gandhi and Brodsky believe that the moratorium on lateral expansions has outlived its original purpose and that the restriction contributes to the stifling of economic growth in neighborhoods such as East Dupont Circle.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

The emergency action is necessary to: (1) ensure that the limitations placed on the issuance of new retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX are not exceeded; and (2) to allow no more than four (4) lateral expansion requests. The emergency rules will expire 120 days from the date of effectiveness or upon publication of a Notice of Final

Rulemaking in the D.C. Register, whichever occurs first. The Board also gives notice of its intent to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 306 to read as follows:

306. EAST DUPONT CIRCLE MORATORIUM ZONE

306.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 17th and Q Streets, N.W., Washington, D.C., as follows: Class A – Two (2); Class B – Two (2); Class CR or Class DR – Sixteen (16); Class CT or Class DT – Two (2); Class CN or DN – Zero (0); and Class CX or Class DX – Zero (0). This area shall be known as the East Dupont Circle Moratorium Zone.

306.2 The East Dupont Circle Moratorium Zone is more specifically described as beginning at New Hampshire Avenue and S Street; East on S Street to 17th Street; South on 17th Street to Riggs Place; East on Riggs Place to 16th Street; South on 16th Street to P Street; West on P Street to 18th Street; North on 18th Street to New Hampshire Avenue; and Northeast on New Hampshire Avenue to S Street, N.W.

306.3 All hotels, whether present or future, shall be exempt from the East Dupont Circle Moratorium Zone.

306.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a Retailer's license Class A, B, CR, CT, DR, or DT located within the East Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.

306.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the East Dupont Circle Moratorium Zone to a new location within the East Dupont Circle Moratorium Zone.

306.6 A license holder outside the East Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the East Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses permitted in the East Dupont Circle Moratorium Zone for that particular class or type, as set forth in Section 306.1.

306.7 Subject to the limitation set forth in Section 306.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.

306.8 No licensee in the East Dupont Circle Moratorium Zone shall be permitted to request a

change of license class to CT, DT, CN, or DN.

306.9 No more than four (4) lateral expansion applications shall be approved by the Board in the East Dupont Circle Moratorium Zone. In the event that four (4) lateral expansion applications are approved by the Board, current holders of a Retailer's license Class A, B, C, or D within the East Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, the prior owner or occupant of which has not held within the last five (5) years a Retailer's license Class A, B, C, or D, or which has had a certificate of occupancy or building permit held in the name of any person other than the current holder of a Retailer's license Class A, B, C, or D within the East Dupont Moratorium Zone at any time within a period of five (5) years. Nothing in this section shall prohibit holders of a Retailer's license Class C or D from applying for outdoor seating in public space.

306.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to section 103 of the District of Columbia Public Education Reform Amendment Act of 2007 ("Public Education Reform Amendment Act"), effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172), and Mayor's Order 2007-186 (August 10, 2007), hereby gives notice of the below emergency and proposed rule. Emergency action is needed to preserve the consistent application of the District of Columbia Public Schools' extended leave of absence provisions. This emergency and proposed rule will correct a typographical error and clarify the eligible time period for extended leaves of absences.

This emergency is necessitated by the need to ensure preservation of the public welfare in general and to clarify the time periods for which employees in the Educational Service shall be eligible for extended leaves of absence.

The emergency rule was adopted on August 31, 2009 and became effective immediately. This emergency rule will remain in effect for up to one hundred twenty (120) days, unless earlier superseded by a notice of final rulemaking.

The proposed rule will be submitted to the Council for a forty-five (45) day period of review. The Chancellor also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register* or upon approval of the rule by the Council whichever occurs later.

Subsection 1204.1 of Title 5 of the District of Columbia Municipal Regulations is amended to read as follows:

1204 EXTENDED LEAVE OF ABSENCE

1204.1 All employees in the Educational Service shall be eligible for extended leaves of absence for periods in excess of thirty (30) days and not to exceed two (2) years.

Comments on this rule should be submitted, in writing, to Michelle Rhee, Chancellor, DCPS, at 825 North Capitol Street, NE, 9th Floor, Washington, DC, 20002, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance, pursuant to the authority set forth in Section 7a of the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code §7-1405.01) (2008 Rpl.), as amended, and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code §7-771.05(6))(2009 Supp.), hereby gives notice of the adoption of emergency rulemaking to amend Chapter 33 of Title 22 of the District of Columbia Municipal Regulations (DCMR). The purpose of these emergency rules is to clarify the criteria through which applicants may prove DC residency for the purpose of gaining enrollment to the D.C. HealthCare Alliance program.

These emergency rules were adopted on August 27, 2009. The emergency rules will take effect on September 15, 2009, and will remain in effect until December 25, 2009, unless earlier superseded by a notice of final rulemaking.

The Alliance program was designed to be a safety net for District residents without any health insurance. The program currently provides health benefits for more than 50,000 low-income residents. Alliance enrollment has expanded rapidly, particularly in the past few years. Consolidation of Alliance enrollment at the Department of Human Service Income Maintenance Administration (IMA) using a single Combined Application for public benefits has increased the accessibility of the program to many District residents previously unreached. However, there remains the risk that non-District residents are easily able to obtain coverage through the program because of the current process for verifying residency. This emergency rulemaking is necessitated by the immediate need to protect the public welfare by insuring that only residents of the District of Columbia are able to obtain coverage through the Alliance, thereby preserving the availability of resources for the proper administration of the program for residents. The clarifications contained in this rulemaking will allow greater integrity and accuracy in verifying residency of DC HealthCare Alliance applicants, while expanding and standardizing the possibilities through which an applicant can prove residency.

The proposed rule will be submitted to the Council for a thirty (30) day period of review. The Director also hereby gives notice of the intent to adopt this rule, in final, in not less than thirty (30) days from the publication of this notice in the *D.C. Register*, or upon approval of this rulemaking by the Council, whichever occurs later.

Chapter 33 (Health Care Safety Net Administration) of Title 22 of the DCMR (Public Health and Medicine) is amended as follows:

Section 3304.4 shall be deleted in its entirety and amended to read as follows:

3304.4 Acceptable forms of verification (either copies or originals) for residency shall be limited to the following items in the name of the applicant:

- (a) A valid motor vehicle operator's permit (or a non-driver identification card) that is issued by the District's Department of Motor Vehicles;
- (b) A voter registration card with an address in the District of Columbia;
- (c) An unexpired lease, rental receipt, or rental agreement for real property located in the District of Columbia;
- (d) A deed, settlement agreement, or mortgage statement for real property located in the District of Columbia;
- (e) An unexpired homeowner's or renter's insurance policy for real property located in the District of Columbia;
- (h) A Property Tax bill issued within the last sixty (60) days for real property located in the District of Columbia;
- (f) A utility bill (water, gas, electric, oil, cable, or landline telephone) issued within the last sixty (60) days for real property located in the District of Columbia;
- (g) A pay stub or earning statement received within the previous thirty (30) days with a District of Columbia address indicating on it that District of Columbia income taxes were withheld; or
- (h) Any other reasonable form of residency verification, as designated by the Department of Health Care Finance.

Section 3304.7 shall be deleted in its entirety and amended to read as follows:

3304.7 Applicants who are homeless or otherwise unable to produce forms of residency verification listed in Section 3304.4 may submit written confirmation from a verifiable source that the applicant resides in the District. Written confirmation shall be supplied using a form (as designated by the Department of Health Care Finance), and shall be completed by one of the following:

- (a) A District of Columbia resident who can verify that the applicant lives in the District of Columbia. The written confirmation must include the name, address, phone number, signature, and one proof of District of Columbia residency from the list in Section 3304.4 for the verifiable source; or
- (b) A non-profit social services organization located in District of Columbia that can verify that the applicant lives in the District. The written confirmation must include the name, address, phone number, signature,

and job title of the signatory and non-profit tax ID number of the organization.

Section 3304.8 shall be deleted in its entirety and amended to read as follows:

3304.8 The foregoing eligibility requirements and the procedures in § 3305 below shall not apply to the medical care and health services provided through the School Health Program or to persons who are in the custody of the Department of Corrections or the Metropolitan Police Department.

Section 3304.9 shall be deleted in its entirety.

Comments on this rule should be submitted, in writing, to Jeffrey K. Matherly, General Counsel, Department of Health Care Finance, Government of the District of Columbia, 825 North Capitol Street, NE, Room 4111, Washington, DC 20002, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address.

OFFICE OF TAX AND REVENUE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Office of Tax and Revenue ("OTR"), pursuant to the authority set forth in D.C. Official Code § 47-1335 (2001), Section 155 of the District of Columbia Appropriations Act, 2001, approved November 22, 2000 (114 Stat. 2476; P.L. 106-522, D.C. Official Code § 1- 204.24c (2001)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the adoption on an emergency basis of an amendment to section 317 of Chapter 3 to Title 9 of the District of Columbia Municipal Regulations ("DCMR"). Only those real properties where taxes are delinquent in the amount of \$1200 or more shall be sold at tax sale. The efficacy of the tax sale is balanced between generation of tax revenue and the cost of employee hours devoted to administration of the tax sale process, including the timely issuance of redemption refunds to tax sale purchasers. The threshold set by this emergency regulation is necessary to maximize the efficient operation of the tax sale by limiting the number of properties sold to those with larger liabilities so that the tax sale may be efficiently administered. The threshold limit could not be made public earlier through the normal rulemaking process because the total number of properties that could be sold due to noncompliance would not be known until taxpayers were given an adequate opportunity to pay delinquency notices and respond to the newspaper publication. Revenues generated from the tax sale are essential to the budget of the District and ensure that services are provided for, *inter alia*, the immediate preservation of the public peace, health, safety, welfare, or morals. An efficiently administered tax sale is also necessary to abate vacant properties thereby also providing for the foregoing policy goals. Therefore the adoption of this rulemaking on an emergency basis is necessary.

The emergency regulation was adopted and became effective on September 1, 2009. The emergency regulation shall expire within 120 days from its effective date or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

OTR also gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Section 317 of Chapter 3 of Title 9 DCMR is amended as follows:

Section 317. Tax Sale Threshold.

317.1 Only those real properties owing \$1,200 or more in taxes, as defined in D.C. Code § 47-1330(2), shall be auctioned at the tax sale occurring in 2009 in accordance with D.C. Code § 47-1346(c).

Comments on this proposed rulemaking should be submitted in writing to Mr. Robert McKeon, Deputy Chief Counsel, Office of Tax and Revenue, 941 North Capitol Street,

NE, 8th Floor, Washington, DC 20002, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rule and related information may be obtained by writing to the person at the address stated herein.